IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 934

WILLIAM A. DOSS,

Petitioner,

vs.

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,

Respondent.

REPLY BRIEF OF PETITIONERS TO THE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WILLIAM A. DOSS, *Pro Se,*
Martin Building,
Monticello, Illinois.

RICHARD E. WESTBROOKS,
3000 South State Street,
Chicago, Illinois,
Attorney for Petitioners.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

Summary of Argument.

CITATIONS.

Cases.

Statutes.

Miscellaneous.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 934.

WILLIAM A. DOSS,

Petitioner,

vs.

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,

Respondent.

REPLY BRIEF OF PETITIONER TO THE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ERRONEOUS STATEMENTS OF FACT CORRECTED.

On page 2 of the Brief in Opposition, counsel says:

> "The petitioner, being under investigation by a grand jury in connection with accusations of criminal libel, disseminated thousands of copies of a mimeographed publication which he called THE LIBERTY PRESS, in which he vituperatively assailed the integrity of the State's Attorney and many other members of the bar and *exhorted the grand jury to investigate and indict the State's Attorney instead of investigating* and indicting the petitioner."

Is it possibly defamatory to suggest that one has a right to expect from the—at the moment—highest law officer in

the State a somewhat higher standard of care in dealing with the facts than is illustrated in the emphasized portion of this statement? It is untrue and evidences a deliberate attempt to prejudice this petitioner's case in this Court. One reference to the Record must suffice as proof of the falsity of this charge by the Attorney General. On page 40, of Liberty Press, issue of November 8, 1941, this petitioner said:

> "Is this a country where there is justice and freedom for all alike? I'm not asking the Grand jury to not investigate about me—I'm offering to help them do all that—but what I am charging that Grand-jury, is with notice of my willingness to appear as a witness, so why stop your investigations at my door? Is Shonkwiler's house or Glasgow's house more privileged than mine? Will Glasgow or Shonkwiler submit to be a witness before the Grand Jury on the same terms that I have agreed to do myself? I'll wager neither of them will * * *."

Again, on page 2 of counsel's reply brief, he says:

> "Upon denial by this court of petitioner's application for *certiorari* and *before petitioner was in custody*, he applied to the United States District Court for the Eastern Division for a writ of *habeas corpus* against the sheriff."

In the first place, the Attorney General here *assumes* one of the propositions he tries to put in issue, and the lower court did not have enough confidence in its merit to base its ruling on it. In the second place, it is incorrect, both as a statement of fact and of a legal conclusion.

Again, on page 3 of his brief, counsel says:

> "It is so singular as to be astonishing that, although the only *actual* ground of decision was that petitioner was not in respondent's custody and hence could not be produced in response to a writ of *habeas corpus*, petitioner does not argue or even discuss that contention in this court."

The answer to that is simple. The lower court seemingly did not have enough faith in the point to rest its decision on it. The proposition is so clearly lacking in merit that we did not discuss it in detail before. We shall do so now, since it is raised.

I.

The petitioner was, in legal contemplation, restrained of his liberty when he applied for the writ. The record justifies the conclusion that he was either in the actual custody of his sureties or of the sheriff, the latter being in any event ready to seize and imprison him (Rec., 64, 66-7). Neither the Attorney General nor the district judge refer to the statute of the State of Illinois which permits the sureties to arrest or take the principal into custody "at any place" for the purpose of surrendering him. R. S., Illinois, March 27, 1874, p. 348, div. 3, Sec. 12.

The fact unequivocally is (Rec., 65) that the seizure of petitioner *at least impended* on December 1, 1943; that the circuit clerk of Piatt County had in her hands on December 1, 1943 the

> "mandate of the clerk of the Supreme Court of the State of Illinois * * * commanding (the circuit clerk of Piatt County) to issue a mittimus to E. E. Lindsley, sheriff of Piatt County, Illinois, commanding the said sheriff to take the body of * * * William A. Doss, and imprison him in the county jail"

(Rec., 65). On the same day, December 1, 1943, petitioner filed his petition for a writ of habeas corpus in the United States District Court. On the same day the U. S. Marshal served the summons on respondent Lindsley (Rec., 64). On December 8, 1943, Lindsley answered, admitting the order to him to seize petitioner, but denying that the judgment finding petitioner guilty was "void and without any force and effect." *He does not deny that he had petitioner*

in custody or that petitioner is restrained of his liberty by the sureties on the recognizance bond, as they may do "at any place." R. S., Illinois, March 27, 1874, p. 348, Div. 3, Sec. 12 (Rec., 66-71). No one knew better than respondent Lindsley whether he had such custody of petitioner as to be able to produce him in court if ordered to do so. He nowhere intimates that he cannot produce the body of the petitioner, because he does not have him in custody; nor does he deny that the sureties have him in custody under the Illinois law empowering them to do so.

The respondent in his answer undertakes to *interpret* the petition (Rec., 70) as showing that

> "defendant does not have the custody of * * * William A. Doss * * * and that said William A. Doss is at liberty on bond."

He does not allege or deny that petitioner is restrained. This is a legal conclusion and is, moreover, incorrect. The petitioner alleged that he had been free on a bond "pending the appeal" (Rec., 3); but the appeal had been decided *against* him and certiorari had been denied by this Court. So that this stay bond had become *functus officio* and no longer served to save him from imprisonment in view of the facts shown. *The sheriff answers upon the theory that the judgment is correct and that this petitioner is correctly and properly in custody and should abide by the sentence and judgment of the court* (Rec., 66-71). This idea that petitioner was not technically in custody is an obvious afterthought in an inglorious attempt to prevent petitioner from presenting his federal questions for determination in the federal courts.

The respondent impliedly admits that the petitioner was restrained of his liberty. He does not plead that he was not so restrained and should not now be permitted to raise an issue he should have raised below, thereby giving petitioner an opportunity to meet the issue in some appropriate

procedure. In *Sallee* v. *Werner et al.*, 171 Ill. App. 96, 99 (1912), we see how a prisoner may be restrained by his sureties:

> "Geiss and Halford, having secured plaintiff to enter into recognizance for their appearance in the Sangamon County Court, thereby placed themselves in his custody and by this act gave him authority to seize or arrest them at any time thereafter and return them to the authorities of Sangamon County * * *."

An important and distinguishing fact is entirely overlooked by the Attorney General in his brief. For the sake of argument let us assume that the record warrants the assumption that the petitioner surrendered himself in order to apply for a writ. If so, the facts show that he is entitled to a writ. The petitioner was found guilty of contempt under *State* process; he exhausted all his remedies in the *State* courts and unsuccessfully applied for certiorari to *this* Court; and assume he, thereupon, surrendered to the *State authorities*—having no other choice—and he in fact did apply to the *federal* court for the protection of his constitutional rights. Put negatively, *this is not a case* where (1) a prisoner voluntarily surrenders to a *State* official or to his sureties in a *State* proceeding in order to apply to a *State court* for a writ of *habeas corpus*. In each of these situations it may be that a question arises whether there is such restraint of liberty as is a prerequisite to a right to a writ. Here, however, the petitioner, constructively or actually in the custody of his sureties, whose obligation to deliver him had matured since the appeal had gone against him, was about to be seized and imprisoned by the sheriff under *State* process after all *State* remedies had been exhausted, and at the time the petition was filed in the federal court was constructively or actually under restraint by his sureties. The rule for which the Attorney General contends would require peti-

tioner *to go to jail and stay there* in order to be entitled to a writ. It is respectfully submitted that this is not the law in this country.

In the article on Habeas Corpus by John Moncrieff in 29 C. J. 23, it is said:

> "So if a prisoner who has been released on bail surrenders himself of his own accord, it is held that habeas corpus will not lie, except where the custody is under state process, and exemption therefrom is claimed under the laws of the United States. In such cases petitioner may surrender himself to the State authorities, and seek relief by habeas corpus in the federal courts."

This distinction is recognized in *Baker* v. *Grice* (1898), 169 U. S. 284, 18 S. Ct. 323, 327, where this Court said:

> "If this application had been made subsequent to a trial of the petitioner in the state court, and his conviction upon such trial, under a holding by that court that the law (under which petitioner was convicted) was constitutional, and where an appeal from such judgment of conviction merely imposing a fine could not be had, except upon the condition of the defendant's imprisonment until the hearing and decision of the appeal, a different question would be presented, and one which is not decided in this case, and upon which we do not now express an opinion."

This Court, in the above quotation, describes exactly the situation of the petitioner, for he had no choice in the State tribunals but *to go to jail and stay there*, if the peculiar legal theory of the Attorney General were sound.

In *Ex parte Beach*, 259 Fed. 956, 958, the court clearly noted this important distinction. Referring to certain cases from the California courts, it said:

> "Those decisions hold, without exception, that where one is at large upon bail given in some criminal proceeding in a given jurisdiction or sovereignty, he will not be permitted voluntarily to surrender himself into

> custody, and thereby assert he is being deprived of his liberty, merely for the purpose of securing a writ of habeas corpus *from a tribunal of the same jurisdiction or sovereignty,* and thereby perhaps hasten his release from prosecution or further attack *by such jurisdiction.* The case at bar is essentially dissimilar." (Emphasis supplied.)

The District Court, the Circuit Court of Appeals and the Attorney General have completely overlooked this important distinction. They rely on *McNally* v. *Hill* (1934), 293 U. S. 131, 55 S. Ct. 24. *That case is not even remotely in point.* There the prisoner was in the penitentiary serving a sentence under a conviction he did *not attack*, and he had not begun and would not for some time begin to serve the sentence (which was to begin when the first term was finished) as to which he sought a writ. The District Court quotes a sentence from the opinion, which was clearly appropriate in view of the facts before the court, but which has no application to the facts in the case at bar. In the case of *McNally* v. *Hill* this Court rested its decision on the old rule of that court, namely, that

> "The lower federal courts have generally denied petitions for the writ where the prisoner was at the time serving a part of his sentence not assailed as invalid."

(293 U. S. 139). Obviously, the facts in the case at bar do not resemble the situation then before this Court. It is submitted with the utmost respect to the lower courts, that this clear misapplication of the rules of the prior decisions of this Court in the case at bar is most persuasive proof that this petitioner's case was not examined with that clear and correct grasp of governing principles to which a man is entitled when his liberty is in the balance. In the Hill case, the writ was sought for the

> "determination of questions which could not affect the lawfulness of the custody."

(293 U. S. 129). It must be obvious that such a situation bears not the remotest resemblance to the facts in the case at bar, where the petitioner literally stood at the gates of the county jail with all State remedies exhausted, when he petitioned the District Court.

The case of *Johnson* v. *Hoy*, 227 U. S. 245, cited on page 5 of the brief in opposition to the writ, is of the same type as the cases described in *Ex Parte Beach*, 259 Fed. 956, 958. Hoy surrendered himself in order to seek a writ "from a tribunal of the same jurisdiction or sovereignty." This is also true of the case of *Stallings* v. *Splain*, 253 U. S. 339, cited on the same page, and in addition, Stallings *had voluntarily agreed to go to Wyoming* and there was, therefore, no question in the case concerning the propriety of his detention or of the right to removal. The case is strangely out of tune with the theme song of the Attorney General. Somebody's ear for legal music is tone deaf.

II.

Under this division, opposing counsel says:

> "Petitioner has not exhausted more appropriate means than habeas corpus for the vindication of his alleged rights,"

and then proceeds to point out an error of petitioner's former counsel, misconstruing, as apparently many other attorneys had done before them, as to when the *three months' time* begins to run on applications *for certiorari* to the State Supreme Court. He does not point out what "more appropriate means" petitioner failed to exhaust. The petitioner is entitled to his fair day in court, if as we think is the case, a federal constitutional question has been involved and has not been adjudicated by a federal court. This is undoubtedly his fundamental right as a citizen under our form of government. It is no small

matter for an individual citizen to be required to combat his case through even one or two courts in bearing all the incidental expenses of attorney fees and court costs, but when this record is viewed, petitioner has been through nigh a half dozen courts, all in good faith and with sincere efforts to obtain a final decision on the merits by the highest court in the land.

The Attorney General himself feels impelled "to confess" in effect that to force upon this petitioner the costly course of legal circuity, for which the lower court seems to contend, would be little less than legal infamy. He says:

> "In fairness to the petitioner and to this court, we are *compelled* to *confess* that, since the Supreme Court of Illinois has passed *directly* and *adversely* to petitioner upon the only substantive contention that he makes here, namely, his contention that his communications to the grand jurors were an exercise of his *constitutional right of free speech* and hence could not have been contemptuous, it should be *fairly presumed that further recourse to the Illinois courts would be unavailing.*"

With that *confession* in this record from the highest legal counsel for the State of Illinois, *now* the sole counsel representing the respondent in this Court, what need for us to argue more, since we are bound to assume that this matter is to be regarded as a serious judicial proceeding and not a legal farce, or worse?

The Attorney General makes the peculiar argument that, inasmuch as the petition for certiorari was technically late, due to misinstruction of his counsel as to time, he has not exhausted his remedies before asking for *habeas corpus*, within the rules laid down by this Court. The record does not suggest sham or anything but good faith on the part of petitioner. This Court has never held that it will search the certiorari proceeding in each case to determine whether there might have been some technical or pro-

cedural falaw in it on which a refusal of the writ *might* have been based. The mere fact that the order refusing the writ states the fact that the petition came too late does not change this rule. The fact is that petitioner applied for the writ and was refused. Since the Attorney General attempts to make a serious issue of this proposition, we feel obligated to consider the subject in some detail.

1. *All State Remedies Actually Have Been Exhausted.* Here a clear grasp of the *facts* is of the greatest importance. This petitioner maintained in the State courts that the conduct which constituted the basis of the charge against him for contempt was within the constitutional guaranties of free speech and a free press found in the Federal Constitution.

On appeal to the Supreme Court of Illinois in *People* v. *Doss*, 382 Ill. 407, at page 315, that court said:

> "The constitutional guaranties invoked by defendant were never intended to and do not sanction such conduct as exhibited by defendant. These rights are not absoulte. Neither liberty of the press nor freedom of speech have yet become license."

It is, thus, clear beyond a doubt that *all the Illinois courts* considered the vital federal questions raised in this Court and in the District Court below, and deliberately passed on them adversely to this petitioner. If petitioner were to file a petition for *habeas corpus* in the Circuit Court of Piatt County on the grounds on which his petition in the court below was based, that court would deny it and point out that these grounds have all been considered by that court; and on appeal to the Supreme Court of Illinois in such a *habeas corpus* proceedings, that court would affirm in a *per curiam* and undoubtedly say:

> "The same legal questions and the same facts were before this Court in *People* v. *Doss*, 382 Ill. 307, and the decision in that case is controlling on all points

raised or which might have been raised, before this Court on appeal."

The Supreme Court of the United States denied a petition for certiorari. *Doss* v. *People*, 320 U. S. 813, 64 S. Ct. 38. Every conceivable remedy has been exhausted and all State courts has passed on the very questions which would be presented, were this petitioner sent back to the State courts.

2. The facts here and in *Ex parte Hawk*, 321 U. S. 114, are fundamentally different, and to send this petitioner back to the State court to lay a foundation for a return to the bar of the federal courts by *habeas corpus* proceedings in the State tribunals is not only not required by the rule of the *Hawk* case, but would be to send him on a journey of legal futility unprecedented except in the movie theatres, where occasionally mock court room scenes are flashed on the screen, scenes which truly mock justice and are intended to be caricatures of every civilized mode of judicial administration.

(a) It is an old maxim that the law does not require idle facts. For petitioner to go to the State court in *habeas corpus* proceedings would distinctly be "idle acts" of the most absurd and inexcusable kind. The maxim has been crystallized into legal doctrines in almost innumerable situations. I call attention to one very common illustration in this field. When a stockholder brings a representative suit in behalf of the corporation, he must normally show as a prerequisite a demand on and a refusal by the officers of the corporation to bring the suit; but if such a demand would be useless, for any one of a number of reasons, such as control of the officers by the wrongdoer himself, no such demand is needed, and a showing of such fact dispenses with the necessity for such a foundation. In excusing a prior demand on the directors because it

would have been useless, the court in *Delaware & H. Co* v. *Albany*, etc., 213 U. S. 435, 29 S. Ct. 540, said:

> "In other words, the complainants were in such a situation by reason of the power which Harrington possessed over those who managed the corporation * * * that appeals to them for action would have been futile."

It is too plain to require further elaboration that in the case at bar an appeal in *habeas corpus* proceedings to the State courts of Illinois would have been a completely futile act, because—to paraphrase the language of the United States Supreme Court in the preceding case—of "the power of precedent over the judges, it would have been useless." I could extend this brief into hundreds of pages with illustrations from the decided cases where the courts do not demand idle, useless or fatuous acts as a foundation for legal proceedings. True, this reasonable rule perhaps finds most frequent application in civil actions, but its rationale makes the doctrine just as sensible in a proceeding like that now before the court.

Let us now look at the *Hawk case*, on which the Circuit Court of Appeals, as well as the district court, chiefly rely, on the point that remedies by *habeas corpus* in the State courts not having been exhausted by this petitioner, therefore the federal courts cannot take jurisdiction in *habeas corpus* because so doing would constitute an improper or unlawful interference with "the actions of state officials. * * * Hence I see no necessity for further comment," said the District Judge, who then cited the *Hawk case*.

Respectfully, it is insisted that there *is need* for further comment, if justice is to be done in this case and in similar cases.

The Hawk case is not controlling because its facts are essentially different from the facts here; but in the state-

ment of the general doctrine it is controlling in favor of this petitioner, in this, that while it requires, as a prerequisite, that the petitioner exhaust "all state remedies available," it does not hold that this rule cannot be complied with without resort to habeas corpus in the State Courts. Put differently, the meaning of the rule is that every appropriate State remedy which, in the circumstances of each case, suggests the possibility that the State courts *may* grant relief, must be invoked before coming to the federal courts; it does not, on the other hand, mean that every conceivable procedural remedy, always including *habeas corpus*, must be resorted to by the petitioner *after* all the available State tribunals have refused him relief in *some* suitable and proper State proceeding, upon the very facts which in a *habeas corpus* or any other proceeding would be before such courts. Why stop with *habeas corpus?* Why not require the aggrieved convict to resort to *coram nobis?* Or *coram vobis?* Or some or all of numerous motions increasingly available in various jurisdictions to test the correctness of legal procedure? Is it not plain that if the test is some formal procedure rather than the actual result in substance, our whole system of justice becomes absurd?

In the *Hawk case* the Court said that the

> "petitioner's present contentions have been presented to the state courts only in an application for *habeas corpus* filed in the Nebraska Supreme Court, which it denied without opinion. From other opinions of that court it appears that it does not usually entertain original petitions for *habeas corpus*, but remits the petitioner to an application to the appropriate district court of the State, from whose decision an appeal lies to the State Supreme Court."

(P. 116.) The Court continues in the *Hawk case:*

> "Of this remedy in the State Court petitioner has not availed himself. Moreover, Nebraska recognizes

and employes the common law writ of *coram nobis* which, in circumstances in which *habeas corpus* will not lie, may be issued by the trial court as a remedy for infringement of the constitional right of the defendant in the course of the trial."

(P. 116)

In *Mooney* v. *Holohan*, 294 U. S. 103, 55 S. Ct. 340, the court reiterated the doctrine thus, without any requirement that *habeas corpus* must in all cases be resorted to as a preliminary:

> "Orderly procedure, governed by principles we have repeatedly announced, requires that before this Court is asked to issue a writ of *habeas corpus* * * * recourse should be had to whatever judicial remedy offered by the State may still remain open."

This is exactly what was done here. We exhausted all State remedies and then came to the District Court and thence to this Court. And it does

> "appear that the question presented here has been considered on the merits by the Supreme Court (of Illinois) in a prior proceeding."

Ex Parte Williams, 317 U. S. 604, 63 S. Ct. 431. This is conceded by the Attorney General, as indeed he unavoidably must do. That "state remedies" be exhausted is said to be a prerequisite in *House* v. *Mayo*, ... U. S. ....., 65 S. Ct. 517 (February 1945),.but it is *not* said that such remedies can be "exhausted" *only* by resort to *habeas corpus* proceedings.

III.

Under division III, opposing counsel says,

> "There is no merit in petitioner's substantive contention that his acts were an exercise of his constitutional right of free speech,"

and then recites, (1) that the matter is not properly before the Court because petitioner, "not being in custody, was

not subject to production on *habeas corpus,*" and (2) "because he failed to exhaust ordinary before pursuing extraordinary remedies," and then states what he conceives to be the history of the origin of grand juries and petit juries, which we cannot conceive of throwing any light upon the issue at bar. He says on page 12,

> "* * * in the state courts, at least, the Federal constitution, which does not guarantee either indictment or trial by jury at all in state courts, imposes no inhibitions upon the reasonable development and evolutionary modification of juridical concepts implicit in either trial of presentment by jury, petit or grand. Illinois was committed long before the *Doss case* to the view, modern and progressive, which inhibits grand juries, as well as petit juries, from availing themselves of common gossip as either incitement to act or evidence upon which to act."

This, obviously, has no bearing on the fundamental question whether there was any such danger, "public, actual or impending," as would justify a restraint on the fundamental right of free expression, for

> "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

United States v. *Carolene Products Co.*, 304 U. S. 144, 152-3. In the case from which we quote above and in the case of *Bridges* v. *State of California*, 314 U. S. 252, we find the underlying philosophy the same as stated below:

> "If the history of civilization has any lesson to teach it is this: there is one supreme condition of mental and moral progress which it is completely within the power of man himself to secure, and that is perfect liberty of thought and discussion. The establishment of this liberty may be considered the most valuable achievement of modern civilization, and as a condition of social progress it should be deemed fundamental. The considerations of permanent utility

> on which it rests must outweigh any calculation of present advantage which from time to time might be thought to demand its violation."

Bury, History of the Freedom of Thought (1913), pp. 239, 240, and passim.

Then opposing counsel cites the case of *People* -v. *Parker*,* 374 Ill. 524, which has nothing to do with any question in the case at bar, except in so far as it shows conclusively that this petitioner has been the victim of harsh and arbitrary treatment and subjected to unreasonably and unconscionably severe penalties. In this case the court said:

> "There is no authority in this state as to when a communication to a grand jury is a contempt of court."

The court also said:

> "We laid down as the test when a publication concerning a grand jury was a contempt of court whether the articles had a tendency to directly impede, embarass or obstruct the grand jury in the discharge of any of its duties remaining to be discharged after the publications were made."

---

*Let us examine the facts in the *Parker case*. On page 525 the court said:

> "Harrison Parker was adjudged guilty of criminal contempt in the criminal court of Cook County and sentenced to imprisonment in jail for a period of ten days."

The court continued:

> "The information charged Parker with writing two letters to the members of the Cook county grand jury, which was then in session. The letters are set forth in the information."

Parker's answer admitted the writting and sending of the letters and denied they constituted contempt. The court continued:

> "The letters are quite lengthy and are couched in exceedingly vicious and inflammatory language. They state in substance, that The Chicago Tribune, a newspaper, Robert R. McCormick, its President, Thomas J. Courtney, State's attorney of Cook county, John S. Clark, the Cook county assessor, and a firm of attorneys which represented The Chicago Tribune, had entered into a criminal conspiracy to defraud the State of Illinois by the illegal omission from the Cook County tax rolls of personal property of The Chicago Tribune. In the first letter Parker charged The Chicago Tribune had already 'stolen' from the State approximately forty-three million dollars. In the second letter the amount was stated to be one hundred million dollars. The letters also charged the above parties, or some of them, with perjury, subornation of perjury, bribery, malfeasance in office,

In this case we find illustrated what the Circuit Court of Cook County, Illinois, considered a fair and reasonable punishment for indirect contempt through communicating with the grand jury. In that case the communications of the defendant Parker were extremely violent and vicious. We have inserted some specimens from the Liberty Press in the Appendix. Nothing said by the petitioner in the Liberty Press is comparable from the standpoint of vituperative violence to the statements Parker made. We copy from the opinion in the margin. Yet, while the court gave petitioner the outrageous sentence of three months in jail and a fine of $2,000, Parker received ten days in jail! Judgments in these cases are discretionary, but when there is such a gap as we see here, it is obvious that the judgment of the court in the case of petitioner was arbitrary and unreasonable and the punishment cruel and unusual, in violation of Amendment VIII of the United States Constitution, were that provision applicable to the states. It must be obvious that petitioner has not been given the benefit of the quality of mercy a great poet said "droppeth

---

and specifically charged The Chicago Tribune with 'influencing, intimidating or bribing the courts to prevent a trial on the law and the facts' and with 'giving orders' to the courts. One of the letters states that McCormick, 'under whose directions this enormous steal has been effected, is a coward, a liar, a cheat, a thief, a courtfixer and all-around scoundrel who, after he has cunningly robbed the State that shelters and protects him, will pollute the Channels of Justice to hide his thefts.' Parker also charged McCormick with having 'railroaded' two innocent men to prison and with having cheated the State out of every penny of inheritance tax due from the estate of his mother. He stated that Courtney (the State's attorney) had refused to prosecute the crimes because of his own complicity in them. He also compared Courtney with a State's attorney in Los Angeles, California, who 'was playing fast and loose with the organized thieves of Los Angeles' and who was indicted by an alert and law-respecting grand jury, tried and convicted. He also referred to the corruption which had been prosecuted in New York, Connecticut, Kansas City and Louisiana. Parker stated three attempts had been made to murder him, but neither the allurements of fortune nor the terrors of death could deter him from doing his duty. He offered to appear before the grand jury and present legal proofs of the charges with reference to the conspiracy, which is mildly described above,' to rob the homeowners of Cook County. He also warned the Grand jury that great pressure would be brought to bear upon it to ignore his letters."

like the gentle dew from heaven upon this place beneath" —possibly Piatt County has at times been beyond the jurisdiction of the gentle rain-Maker.

The notion that anything in the Liberty Press interfered with the administration of justice in Piatt County is somewhat farfetched. For the present Attorney General of Illinois solemnly to urge upon this high Court that justice was put in jeopardy by matters set forth in the Liberty Press by this petitioner is a little startling, for the courts of Illinois contain a report of a case very recently decided, where justice was actually interfered with and a change of venue ordered, because the Attorney General, now sole counsel for the State of Illinois in this matter, and others had made public statements about a criminal case pending before the grand jury, which the court deemed of such a prejudicial inflammatory and improper character as to necessitate a transfer of the proceeding to another county (Piatt). We refer to the case of *People* v. *Ziller* in McLean County. We do not recall any worry about contempt in that case. Two wrongs, we know, do not make a right, but justice should be administered with impartiality and its precepts respected by those who ask respect for them.

IV.

It must not be overlooked, although both the State and the lower federal courts seem to have done so, in this case, that the real conflict here is between *individuals*, namely, *this petitioner*, and a public official of Piatt County, Illinois (only incidentally some other persons). This official invoked the aid of penal statutes in his controversy with this petitioner and while State's attorney caused grand jury to be convened to investigate the conduct of petitioner to determine whether he should be indicted for criminal libel under a State statute. While these matters were in

progress, the petitioner published the material (and circulated it) which formed the basis of the contempt charge. During all this time the State's attorney and others had the full protection of the civil libel laws of the State, but they did not invoke them. So while here the *formal* "conflict is between authority and the rights of the individual" (*West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 630), the real struggle is between natural persons, one of whom invokes a State law to restrict the right of the individual (petitioner) to free speech.

The Fourteenth Amendment, through the due process clause, transmits the principles of the First Amendment to this case. These principles are definite.

> "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect * * *. They may not be restricted in order to protect private rights *susceptible to redress by other means.*" (Emphasis supplied.) *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639, 641.

On page 23 (Appendix) counsel set forth statements from the Illinois Supreme Court which glaringly illustrate how grossly that tribunal is out of step with this Court on the important subject of a free press. It is there said that it matters not when newspaper articles appeared, the publisher is equally subject to condemnation. This is not the law as laid down by this Court. *In re W. A. Doss*, 367 Ill. 570 (1937), we have another illustration of the failure of that court to grasp the fundamental rights of individuals under the First and Fourteenth Amendments. The court there said:

> "The publication of newspaper articles, regardless of when they appeared * * * (is) especially to be condemned. (P. 573.) * * * The fifth complaint charged respondent with the preparation and the

> publication of numerous newspaper articles which, although appearing after the trial of the cases involved, criticised the court and prosecuting officers in intemperate language."

Contrast this with what this Court said in *Bridges* v. *State of California*, 314 U. S. 252 (1941), where, among other things, it said:

> "Such criticism after final disposition of the proceedings would clearly have been privileged (P. 272.) * * * The assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American public opinion."

(P. 270.) This great Court did not take refuge behind platitudinous generalities, such as suggesting that the petitioner is "responsible" for his acts; it clearly and ably expounds the doctrine that there must be "clear and present danger" to some public right or interest which is paramount to the right of the individual to free expression. The state courts and the lower federal court alike have either overlooked or refused to take the trouble to consider this gravely important subject.

Even where the judgment of the Supreme Court is attacked in a case pending before it, rules against publishers for contempt would be discharged where the publications do not create a clear and present danger of substantive evils. *Graham* v. *Jones* (1942), 200 La. 137, 7 So. (2d) 688.

In *Edward G. Budd Mfg. Co.* v. *National Labor Rel. Board* (1942), 142 Fed. (2d) 922, 928, the Circuit Court of Appeals, 3rd Circuit, said:

> "A contempt proceeding may serve in appropriate circumstances as the efficient means for vindicating a court's judgments or decrees, but 'it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality.' See

Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 293, 61 S. Ct. 552, 555, 85 L. Ed. 836, 132 A. L. R. 1200 (concerned with rights under the Fourteenth Amendment)."

Both the Attorney General and the lower State and federal courts miss completely the point made by petitioner, namely, that the jury obviously was not influenced by the matters it is said petitioner sent the members, because he was indicted. The reason for calling attention to this fact is that it shows that there never was any "clear and present danger of evil" or "grave and immediate danger" from the conduct of petitioner which the court held contemptuous. This is so obvious that no further elaboration of the point will be made. This Court has held many times that "clear and present danger of evil" is the test, not the *intent* which some one may spell out of conduct. The Illinois court accepts the latter. *People* v. *Doss*, 282 Ill. 307; brief in opposition, 18, ff.

In a concurring opinion in the case of *Whitney* v. *California*, 274 U. S. 357, 376, Justice Brandeis said:

> "Fear of serious injury cannot justify suppression of free speech * * * there must be reasonable ground to believe that the danger apprehended is imminent * * * that the evil to be prevented is a serious one. * * * But even advocacy of violation (of law), however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement. * * * In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated. * * * Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as a means of averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as a means of protection, is unduly harsh or oppressive. * * * There must be the probability of serious injury to the state."

This is the law in this Court; it is not the law in the jurisdiction of Illinois, where these fair standards, alike for the protection of the individual and of society, are not even mentioned in the cases. It is respectfully urged that, measured by these standards, the interpretation of the law by the lower State and federal courts violates the constitutional rights of this petitioner.

V.

What the rule at common law may have been on the subject of communicating with grand jurors is not decisive, not even important, in relation to any point on the subject of a free press, which also includes the right to circulate pamphlets, papers and the like. Said Justice Sutherland in speaking for a unanimous report in *Grosjean* v. *American Press Co.* (1936), 297 U. S. 233, 249:

> "In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting any form of previous restraint upon printed publications, or their circulation. * * *"

The "previous restraint" here is the so-called criminal libel statute, as construed by the lower State and federal courts, and the old rules of the common law on the subject of communications with grand jurors.

Conclusion.

This petitioner, as an individual, is, of course, relatively unimportant. And yet we recently have been told by an able and clear-thinking man:

> "The second postulate of democracy, equally funda-

> mental, is that the individual is of infinite worth—so towering in the scale of values that he has rights even against the state."

Challenge to Freedom, by H. M. Wriston, 1943, p. 12. It happens, however, as petitioner firmly believes and therefore most solemnly avers, that his situation and the case he presents embody certain eternal verities of which the clauses in the Federal Constitution for the protection of free expression are but the verbal symbols. He speaks for the spirit of liberty which, in view of the argument of the Attorney General and the decisions of the Illinois and lower federal courts on the subject, is in grave peril in the jurisdiction of Illinois, unless this Court draws around it "the awful circle" of the Constitution, over the arc of which no tyrant, no despoiler of freedom, has heretofore dared to tread. Dred Scott was a black man, unimportant and unknown, yet he and his case were instruments in a critical era of our national existence which profoundly affected the course of our history. This case, your Honors, means much to this petitioner, but he believes it means infinitely more as a white stone along the pathway which liberty has moved in its stately march forward for the betterment of the lot of the ordinary man. Inspired by these convictions, your petitioner has carried on this fight and now respectfully suggests that a writ of certiorari should be granted.

Respectfully submitted,

William A. Doss,
Petitioner, Pro Se.

Richard E. Westbrooks,
Attorney for Petitioner,
3000 South State Street,
Chicago, Illinois.